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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 SASAN MIRKARIMI, individually and
on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 NEVADA PROPERTY 1, LLC, a
16 Delaware limited liability company
DBA THE COSMOPOLITAN HOTEL
17 OF LAS VEGAS, and DOES 1-50,
inclusive,

18 Defendant.
19

CASE NO. 12-CV-2160 BTM DHB

**DECLARATION OF JAMES T.
HANNINK IN SUPPORT OF
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: June 19, 2015

Time: 11:00 a.m.

Ctrm: 15B

Judge: Hon. Barry Ted Moskowitz

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1 I, James T. Hannink, declare as follows:

2 1. I am an attorney at law licensed to practice in the State of California
3 and am a partner with the law firm of Dostart Clapp Hannink & Coveney, LLP,
4 counsel of record for Plaintiff Sasan Mirkarimi.

5 2. A summary of my educational and professional background is as
6 follows: I obtained a B.A. from Calvin College in 1984 with majors in Economics
7 and Political Science. I obtained a J.D. from the University of California, Davis, in
8 1987. After graduating from law school, I joined the San Diego firm of Gray, Cary,
9 Ames & Frye (which is now DLA Piper) as an associate, and was a partner in the
10 litigation group of that firm from 1995 to 2008. While at DLA Piper, I focused on
11 complex litigation matters including intellectual property and class actions. Since
12 joining Dostart Clapp Hannink & Coveney, LLP in 2011, I have represented
13 plaintiffs in class action litigation, including trial and appellate matters.

14 3. My litigation colleagues at Dostart Clapp Hannink & Coveney, LLP
15 include James F. Clapp and Zach P. Dostart. A summary of their educational and
16 professional backgrounds is set forth below.

17 4. Mr. Clapp is a 1989 graduate of Northwestern University Law School.
18 From 1989 through 1994, Mr. Clapp was a litigation attorney with Gray Cary (now
19 DLA Piper) in San Diego, California, where his practice focused on complex
20 business and employment disputes. In 1995, he co-founded Dostart Clapp, APC,
21 which subsequently became Dostart Clapp Hannink & Coveney, LLP. Since 1999,
22 Mr. Clapp's practice has focused almost exclusively on representing plaintiffs in
23 class action matters.

24 5. Zach Dostart has been a member of the California Bar since 2008.
25 Mr. Dostart is a graduate of Pepperdine University School of Law, where he served
26 as Managing Editor of the *Pepperdine Law Review*. Mr. Dostart has completed the
27 C.P.A. exam and holds an M.B.A. After law school, Mr. Dostart was an Associate
28 at Lehman Brothers in New York City and then served as a prosecutor in the office

1 of the San Diego District Attorney before joining the firm that is now Dostart Clapp
2 Hannink & Coveney, LLP. Mr. Dostart focuses almost exclusively on representing
3 plaintiffs in class action matters.

4 6. Since 1999, Dostart Clapp Hannink & Coveney, LLP has been
5 appointed lead or co-lead class counsel in more than 50 certified class actions in
6 State and federal courts.

7 7. My colleagues and I have significant class action experience, including
8 privacy litigation, employment litigation, and other consumer protection litigation.
9 In the area of privacy litigation, my firm has handled other cases involving claims
10 under the California Invasion of Privacy Act, including *Reed v. 1-800 Contacts,*
11 *Inc.*, Case No. 12-cv-02359 JM (BGS) (S.D. Cal.), *McDonald v. Bass Pro Outdoor*
12 *World, LLC et al.*, Case No. 13-cv-0889-BAS (DHB) (S.D. Cal.), and several other
13 actions that are pending.

14 8. My colleagues and I have been actively involved in this litigation since
15 its inception in July 2012. Among other things, our work has included
16 communicating with Mr. Mirkarimi, drafting and reviewing pleadings, opposing
17 several motions at the pleadings stage, preparing for and participating in multiple
18 court conferences and hearings, communicating with opposing counsel on a wide
19 range of issues, extensive written and deposition discovery, review and analysis of
20 tens of thousands of pages of documents, briefing several discovery motions,
21 preparing for and attending the mediation, drafting the settlement documents, and
22 preparing the instant motion.

23 9. On October 24, 2013, the parties participated in an Early Neutral
24 Evaluation Conference before Magistrate Judge David H. Bartick. The case did not
25 settle, so the parties thereafter conducted a Rule 26(f) conference and commenced
26 formal discovery in November 2013. During the ensuing months, my office
27 propounded on defendant seven sets of requests for production of documents
28 (totaling 185 document requests), five sets of interrogatories (totaling 36

1 interrogatories), and two sets of requests for admissions (totaling 19 requests) on
2 defendant. Plaintiff took nine depositions, and obtained discovery from third parties
3 pursuant to Rule 45 subpoenas.

4 10. The written discovery gave rise to a number of disputes on which the
5 parties met and conferred in accordance with the Fed. R. Civ. P. 37 and Magistrate
6 Judge Bartick's Chamber's Rules. During the meet and confer efforts, defendant
7 agreed to supplement many of its written responses and to produce many of the
8 requested documents. During this litigation, The Cosmopolitan served a total of 28
9 sets of initial and supplemental responses to interrogatories, requests for production,
10 and requests for admission, and produced Excel spreadsheets and other documents
11 amounting to tens of thousands of pages.

12 11. The evidence obtained in discovery establishes that The Cosmopolitan
13 had standardized procedures with respect to recording telephone calls, and did not
14 institute procedures to notify callers that calls are recorded until after the lawsuit
15 was filed.

16 12. Among other information, plaintiff sought production of call system
17 metadata reflecting the recorded calls at issue, including the date, time, and duration
18 of each call, and the telephone numbers involved. It was eventually determined that
19 the system metadata is available for months beginning with June 2012, but not for
20 earlier months.

21 13. The call system metadata reflects that, during the two-month period
22 June 1, 2012 to July 31, 2012, The Cosmopolitan received a total of approximately
23 60,000 *inbound* calls on recorded lines from about 26,000 unique California
24 telephone numbers. The call system metadata further reflects that, during those
25 same two months, The Cosmopolitan made a total of 270 recorded *outbound* calls to
26 224 unique California telephone numbers. Based on this information, as well as
27 other information developed through discovery, I believe a reasonable estimate of
28 the number of potential class members is about 150,000.

1 14. The proposed settlement was the result of a full-day mediation session
2 in San Francisco, California on February 20, 2015, before mediator David A.
3 Rotman. The parties were able to agree on settlement terms, and thereafter the
4 settlement documents were finalized and the Settlement Agreement was signed on
5 May 8, 2015. At all times, the settlement negotiations, while cordial, were
6 adversarial, non-collusive, and were conducted at arm's-length.

7 15. Based on the discovery and investigation that was completed, plaintiff
8 and his counsel are sufficiently familiar with the facts of this case and the applicable
9 law to make an informed judgment as to the fairness of the settlement. In my
10 opinion, the proposed settlement is fair, reasonable, and in the best interests of the
11 class members given the risk factors that are discussed in the motion for preliminary
12 approval.

13 16. Plaintiff Sasan Mirkarimi has no interests that are antagonistic to those
14 of the other class members.

15 17. Attached hereto as Exhibit 1 is a true and correct copy of the Settlement
16 Agreement entered into between the parties.

17 18. Attached hereto as Exhibit 2 is a true and correct copy of the Order on
18 Plaintiff's Motion for Class Certification in *Greenberg v. E-Trade Financial Corp.*,
19 Case No. BC360152 (Los Angeles County Superior Court Feb. 7, 2008)

20 19. Attached hereto as Exhibit 3 is a true and correct copy of Notice of
21 Motion and Unopposed Motion for Preliminary Approval of Class Action
22 Settlement in *Skuro v. BMW of North America, LLC*, Case No. 10-8672 GW
23 (FFMx) (C.D. Cal. Jan. 24, 2012).

24 20. Attached hereto as Exhibit 4 is a true and correct copy of Memorandum
25 of Points and Authorities in Support of Plaintiff's Motion for Preliminary Approval
26 of Class Action Settlement in *Marenco v. Visa Inc.*, Case No. 10-8022 DMG
27 (VBKx) (C.D. Cal. June 6, 2011).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed on May 8, 2015 at San Diego, California.

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